Tocco Division of Park-Ohio Industries, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 91, UAW. Case 8-CA-12702

July 30, 1981

DECISION AND ORDER

On June 27, 1980, Administrative Law Judge Russell M. King, Jr., issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief. Respondent filed an answering brief to the General Counsel's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The complaint alleges, *inter alia*, that Respondent violated Section 8(a)(1) and (5) by unilaterally transferring work to its Boaz, Alabama, plant. The record evidence described by the Administrative Law Judge shows that the Union has represented the production, maintenance, and service employees at Respondent's Tocco plant for 35 years. Between 1974 and 1976 Respondent conceived, constructed, and opened a plant at Boaz which had the same manufacturing capacity as the Tocco plant. The purpose of the Boaz plant was and is to manufacture the Tocco products at less cost. Following this transfer of some manufacturing equipment from Tocco to Boaz in 1976, the Union filed a charge that the transfer of the machinery and transformer work to Boaz, without bargaining with the Union, violated the Act.

During the parties' contract negotiations between December 1976 and June 1977, Respondent submitted nine separate lengthy and complete proposals. Each proposal made reference to the Boaz plant and the earlier settlement. In each proposal, Respondent also maintained its right to transfer work from Tocco to Boaz and invited the Union to make any proposal it desired to restrict or limit Respondent's asserted right. The Union made no such proposal. On January 14, 1977, the Union did propose, however, a severance pay clause. Respondent opposed severance pay until April 20 and on June 13 both parties agreed on a severance pay provision.[1] On July 11, a new contract was agreed to and executed, and the strike, which had commenced on January 21 when the old contract expired, was ended.

On August 25, 1977, the Company announced to the Union that all transformers, transformer components, and oscillators would be manufactured at Boaz in the future. This announcement also stated that future transfers of work were under consideration but gave no specifics. At a point not specified in the record, between the August 1977 meeting and January 1979, Respondent informed the Union that "contractor manufacturing" and a six-spindle numerical control lathe would be transferred to Boaz.

On January 30, 1979, the Company announced the transfer of the water systems, work stations, control stations, TOCCOtrols, and electrical control panel from Tocco to Boaz. Respondent explained that this transfer would involve the "relocation" of approximately 25 employees at Tocco over the ensuing 6 months. The Union requested time to consider the transfer and a further meeting on the entire subject was scheduled for February 8. Due to the nonavailability of various participants the February 8 meeting was not held.

Meanwhile, on February 27, the Union was notified that four employees were to be laid off the following day. This layoff was the topic of discussion at the meeting held on March 1. At that meeting, the Union claimed that the layoffs were premature and that there should have been prior negotiations or bargaining. The Respondent claimed that the entire matter had been settled during the 1976–77 contract negotiations. The instant charge was filed on March 21.

In his Decision (sec. II,C,1), the Administrative Law Judge dismissed the 8(a)(1) and (5) allegations arising from the transfer of the work to Boaz by finding that:

> The language of the severance pay clause, the bargaining history, and the evidence as a whole dictate my conclusion in this case that the union waived its right to participate in or bargain about any decision to transfer work to Boaz and any resulting terminations or layoffs, except as may be otherwise provided in the contract. I simply feel that that matter is so clearcut in this case that it deserves no further discussion or attention in this Decision.

It is well settled that an employer has an obligation to bargain concerning a decision to relocate unit work.[2] The statute, rather than the contract, gives the employees' bargaining representative a right to be consulted concerning such unilateral

[1] As reported by the Administrative Law Judge, the contract was never offered or admitted into evidence in this case. The severance pay clause provides that in the event "the Company determines" to close the Tocco plant or transfer a Tocco operation, severance pay will be provided.

[2] *American Needle & Novelty Company, et al.*, 206 NLRB 534 (1973).

change affecting terms and conditions of employment.[3] A union may waive its statutory right to bargain about such changes in terms and conditions of employment.[4] The Board requires, however, that the waiver not be lightly inferred but must be "clear and unmistakable."[5] Such waiver may be found in express contract language or in unequivocal extrinsic evidence bearing upon ambiguous contractual language.[6]

Applying these principles here, we do not find that the severance pay provision of the parties' contract standing alone constitutes a clear and unmistakable waiver by the Union of its statutory right to be consulted in advance about Respondent's decision to transfer work to Boaz. The severance pay provision speaks only of the severance pay to be provided in the event of the closure of the Tocco plant or transfer of a Tocco operation. The provision is at best equivocal, however, as to the waiver issue before us. It contains no specific reference to a right by Respondent to transfer work to Boaz without prior notice or consultation with the Union.[7]

Nor do we find that the bargaining history establishes that the Union has waived its right to bargain over the transfer of unit work. The entire thrust of Respondent's bargaining proposals during the 1977 negotiations was to notify the Union that Respondent did not recognize any restrictions on its freedom to transfer work and to invite the Union to submit proposals to restrict this asserted freedom. But there is no showing on this record that the Union clearly relinquished its statutory right prior to the 1977 negotiations. Absent such a finding, the thrust of Respondent's proposals, which ignore the Union's statutory right, represented an attempt by Respondent to shift the burden for obtaining contract language dealing with transfer of unit work to the Union.[8] It was not, however, incumbent on the Union to obtain contract language. Instead, it was incumbent on Respondent, if it sought to limit or restrict the Union's statutory right, to obtain the waiver.[9] That Respondent never even submitted a proposal which sought to limit or restrict the Union's statutory right undercuts Respondent's reliance on the bargaining history to establish a waiver.

Finally, we find no merit in Respondent's contention that the Union's acquiescence in earlier transfers, alone or with the severance pay provision and bargaining history, establishes a union waiver. In both instances where Respondent announced work transfers that affected directly the employee complement in the bargaining unit the Union questioned Respondent's action.[10] Thus, the Union protested the first transfer of unit work to Boaz in 1976 and filed a charge with the Board. And the Union requested a meeting on the instant transfer when it learned about it on January 30, 1979. Although the Employer agreed to meet with the Union, it carried out the transfer before the meeting took place.[11]

In sum, we do not find that the Union waived its right to bargain regarding the transfer of unit work either in express contract language or by unequivocal extrinsic evidence bearing upon ambiguous contract language. Accordingly, we conclude that Respondent's failure to bargain as to the January 1979

[3] *McDonnell Douglas Corporation*, 244 NLRB 881 (1976). See also *Brown Company, etc.*, 243 NLRB 769, 769–770 (1979).

[4] See, e.g., *Consolidated Foods Corporation*, 183 NLRB 832 (1970).

[5] *Keller-Crescent Company, a Division of Molser*, 217 NLRB 685 (1975); and *New York Mirror, Division of Hearst Corporation*, 151 NLRB 834 (1965).

See also *The Timken Roller Bearing Co. v. N.L.R.B.*, 325 F.2d 746, 751 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964).

[6] *International Union of Operating Engineers, Local 18 (Davis-McKee, Inc.)*, 238 NLRB 652 (1978).

[7] That a clear and unmistakable waiver is not present here is plainly shown by comparing the severance pay provision with the explicit contract language in *Consolidated Foods, supra*, a case relied on by Respondent in its brief to the Board. There, the contract afforded the employer "the exclusive right" to "change, modify or cease its operation, processes, or production, in its discretion . . . ," as well as provisions that "the Employer shall be the sole judge of all factors involved including . . . location of business and personnel." The instant case contains no such explicit language.

In its brief to the Board, Respondent also relied on *Radioear Corporation*, 214 NLRB 362 (1974), to support its waiver contention. We note that the majority there relied heavily on a zipper clause in the parties' contract to support the waiver finding. No such claim based on a zipper clause is present here. That aside, Chairman Fanning and Member Jenkins continue to adhere to their dissent in *Radioear*.

[8] The Board has held that unilateral removal of bargaining unit work during a contract term is the type of contract modification proscribed by the Act. Under Sec. 8(d) of the Act, a party to the contract cannot be compelled to bargain about such a modification. See *Brown Company, supra*.

[9] We also note that there is no evidence that the Union took the bait dangled by Respondent's bargaining stance, i.e., the Union did not submit any proposal to limit or restrict Respondent's asserted right. Arguably, the absence of any such proposal by the Union is evidence that the Union did not recognize the right asserted by Respondent during negotiations. Compare *Amcar Division, ACF Industries, Incorporated*, 247 NLRB 1056 (1980). And, of course, the Union's filing of the charge in 1976, on the first occasion that Respondent moved unit work to Boaz and immediately preceding the 1977 negotiations, comports with the Union's view that Respondent does not enjoy the asserted freedom to transfer unit work without bargaining with the Union.

[10] By contrast, the record here does not indicate that any employee layoffs or transfers were announced, or resulted from, the other two equipment transfers between August 1977 and January 1979.

We note that the prepared statement by Respondent which was read to the Union in August 1977 specifically stated that the Company does not wish to discontinue any current Cleveland operation and has no intention to do so. Further, it stated that if additional decisions are made on this matter, Respondent will inform the Union.

The record fails to establish the precise timing, scope, or effect, if any, on unit employees of the two changes that occurred after August 1977 but before January 1979.

[11] Compare *International Shoe Company*, 151 NLRB 693 (1965), where the pattern of acquiescence occurred prior to the disputed negotiations and served as background to explain the union's unsuccessful attempt to obtain language restricting the employer's right to move during the negotiations.

decision to transfer unit work to its Boaz plant constituted a violation of Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production, maintenance and service employees and timekeepers of the Ohio Crankshaft and Camshaft Division and the Tocco Division of Park-Ohio Industries, Inc., excluding office employees, plant protection employees, salaried employees, all group leaders, foremen, foreladies, and all other supervisory employees, guards and professional employees as defined in the Act.

4. By transferring to its Boaz, Alabama, plant work formerly performed by employees in the above-described unit, without providing the Union with an opportunity to bargain concerning the decision to locate such unit work, which transfer resulted in the layoff of unit employees, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. Such unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

THE REMEDY

We have found that Respondent violated Section 8(a)(5) and (1) by unilaterally transferring unit work to another of its plants. Hence we shall order Respondent to cease and desist from unilaterally transferring unit work or otherwise making unilateral changes in the employees' terms and conditions of employment without providing an opportunity to bargain to the employees' designated bargaining agent. In order to insure that there is genuine bargaining over the decision to transfer unit work to another plant, we shall order Respondent to restore the *status quo ante* by reinstituting the water systems, work stations, control stations, TOCCOtrols, and electrical control panel at its Tocco-Cleveland plant and to fulfill its statutory duty to bargain. There is no evidence that this remedy creates an undue hardship on Respondent. Respondent is still in existence and presently performs many functions at the same plant facility it did in February 1979.

The loss of employment of unit employees here stems directly from Respondent's unlawful action in failing to meet its bargaining obligation. We find that a meaningful bargaining order can be fashioned only by directing Respondent to offer unit employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges and to make them whole for any loss of earnings suffered by reason of their unlawful termination, by payment to them of a sum of money equal to that which normally would have been earned from the date of layoff to the date of Respondent's offer of reinstatement, less net earnings during such period, with backpay computed on a quarterly basis, with interest, in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[12]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Tocco Division of Park-Ohio Industries, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 91, UAW, as to the decision to transfer unit work and by unilaterally transferring unit work to its Boaz, Alabama, plant where such transfer has a substantial, adverse effect on unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action:

(a) Upon request by the Union, bargain collectively with the Union with respect to the decision to transfer the water systems, work stations, control stations, TOCCOtrols, and electrical control panel from Tocco to Boaz, Alabama.

(b) Reinstate at the Cleveland-Tocco plant the work previously performed by unit employees represented by the Union and make whole these employees in the manner set forth in the section above entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copy-

[12] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

ing, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business at Cleveland, Ohio, copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with the Union as to the decision to transfer unit work, or unilaterally transfer unit work without bargaining with the Union, or any other union the employees may select as their exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with the efforts of the Union to bargain collectively on behalf of the employees in the appropriate unit described below:

All production, maintenance and service employees and timekeepers of the Ohio Crankshaft and Camshaft Division and the Tocco Division of Park-Ohio Industries, Inc., excluding office employees, plant protection employees, salaried employees, all group leaders, foremen, foreladies, and all other supervisory employees, guards and professional employees as defined in the Act.

WE WILL, upon request by the Union, bargain collectively with it with respect to the decision to transfer the water systems, work stations, control stations, TOCCOtrols, and electrical control panel from Tocco Division to Boaz, Alabama, and, if an understanding is reached thereon, reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL reinstate at Tocco Division of Park-Ohio Industries, Inc., the work previously performed by unit employees represented by the Union, and offer to these employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by them, with interest.

TOCCO DIVISION OF PARK-OHIO INDUSTRIES, INC.

DECISION

STATEMENT OF THE CASE

RUSSELL M. KING, JR., Administrative Law Judge: This case was heard by me in Cleveland, Ohio, on November 7, 8, and 9, 1979.[1] The charge was filed by the Union on March 21 and the complaint was issued May 30 by the Regional Director for Region 8 of the National Labor Relations Board (the Board), on behalf of the Board's General Counsel. The complaint alleges that the Company unilaterally transferred work to its Boaz, Alabama, plant and subcontracted out other work resulting in the layoff of four employees without first bargaining with the Union, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).[2] The complaint further alleges that the Company improperly re-

[1] All dates hereafter are in 1979 unless otherwise indicated.

[2] The pertinent parts of the Act provide as follows:

Sec. 8. (a) It shall be an unfair labor practice for an employer—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 . . . .

* * * * *

Sec. 7. Employees shall have the right . . . to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining and other mutual aid or protection . . . .

* * * * *

Sec. 8. (a)(5) to refuse to bargain collectively with the representatives of his employees . . . .

fused to furnish the Union with information regarding the transfer of work and subcontracting.

Upon the entire record including my observation of the demeanor of the witnesses,[3] and after due consideration of the briefs filed herein by the General Counsel and Respondent Company, I make the following:

The pleadings and admissions herein establish the following jurisdictional facts. Respondent Company is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Delaware and maintains its Tocco Division, a manufacturing facility or plant, in Cleveland, Ohio, the sole facility directly involved herein, and where it is engaged primarily in the production of heat induction units. Annually, in the course and conduct of its business operations, the Company ships products valued in excess of $50,000 from its Tocco facility directly to points located outside the State of Ohio. Thus, and as admitted, I find and conclude that Respondent Company is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

FINDINGS OF FACT

I. JURISDICTION

Also as admitted, I find that the Charging Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

A. *Background*[4]

The Union has represented the Company's production, maintenance, and service employees for some 35 years.[5] In 1974 the Company conceived the Boaz, Alabama, plant and in mid-1975 construction commenced. Boaz has the same manufacturing capabilities as Tocco and its original and continuing purpose was and is to manufacture the Tocco products more cheaply. In 1976 the Company transferred some work to Boaz, including several pieces of manufacturing equipment from Tocco, which resulted in the filing of a charge by the Union and the subsequent issuance of a complaint on September 3, 1976 (Case 8-CA-10328). The existing contract between the Company and the Union was due to expire January 21, 1977, and negotiations began in mid-December 1976. The then existing case was eventually settled during these negotiations and on March 21, 1977.[6] In the meantime with the expiration of the contract on January 21, 1977, the employees struck, the parties went to Federal mediation, and finally on July 11 a new contract was agreed to, executed, and the strike was ended.[7]

During the contract negotiations and between December 17, 1976, and June 13, 1977, some nine separate, complete, and lengthy typewritten proposals were submitted to the Union for consideration. In each of these proposals the Company made reference to the Boaz plant, the earlier settlement, maintained its right to use and transfer work from Tocco to Boaz, and invited the Union to make any proposal it desired which would restrict the Company's freedom from transferring work to Boaz or otherwise limiting its use. The Union never responded nor commented but did, on January 14, 1977, interject into the negotiations a severance pay clause, which had never been discussed before. The Company opposed severance pay up until April 20 and on June 13 both parties agreed on a severance pay provision, which essentially settled the entire contract dispute. On August 25, 1977, the Company announced to the Union that it intended work transfers to Boaz and some work was in fact transferred on several occasions without union objection.

I find and conclude without doubt that the issue of Boaz plant transfers was "on the table" during the above negotiations and the matter was resolved with full freedom in the Company, but with severance pay should layoffs or terminations occur.

B. *Events Surrounding the Charge and Complaint in This Case*

On January 8, 1979, employee and Union President Imars wrote Personnel Director Kozman about the Company's policy of "sub-contracting," requesting the customer jobs that were being "farmed out," the names of the subcontractors, the dates the work was contracted out, and the number of hours of work involved. On January 9 Union Representative Browner also wrote Kozman expressing concern about "problems regarding loss of work at the Tocco plant," and requesting a meeting. Kozman replied on January 17, agreeing to a meeting after the Company had responded to Imars' January 9 letter. On January 19, Works Manager John Watson replied to Imars' information request of January 9, furnishing all of the requested information except for specific dates, which Watson stated were "not immediately

[3] The facts found herein are based on the record as a whole and upon my observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of *N.L.R.B.* v. *Walton Manufacturing & and Loganvile Pants Company*, 369 U.S. 404, 408 (1962). As to those testifying in contradiction to the findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in light of the entire record.

[4] A complete summary of the testimony of all the witnesses will not appear in this Decision, although all testimony has been considered. Reference will be made to individual portions of testimony where appropriate. The General Counsel called four witnesses as follows: employee and Union President Joseph Imars; Union International Service Representative Horace Browner; employee and Chief Tocco Plant Committeeman Dennis Szulinski; and employee and Union Vice President Edwin L. Hoag. The Company called Personnel Director Ben M. Kozman, Tocco Materials Manager Robert Rossley, and Attorney John J. Adams.

[5] The alleged appropriate unit for the purposes of collective bargaining is set out in par. 5 of the complaint, is admitted in the Company's answer, and I so find. It will not be completely set out here but will appear later herein in the section entitled "Conclusions of Law." In addition to the Tocco Division plant (95 employees) the unit also includes the employees of the Company's crankshaft and camshaft division, another separate and larger plant (850 employees) also located in Cleveland.

[6] The settlement involved approximately $15,000 in backpay to seven employees, and the settlement agreement contained a "non-admission" clause in favor of the Company.

[7] For reasons unknown to me, the contract was never offered or admitted into evidence in the case.

available," and the actual names of the subcontractors, which Watson advised would not be "good business practice." The names and specific dates were never forwarded, although the record itself does not reflect any renewed request or dissatisfaction with the initial response. On January 30 at a meeting at the plant of the union committee members and Union Representative Browner, the Company announced further future transfers of work to Boaz which would involve the "relocation" of approximately 25 employees at Tocco over the next 6 months.[8] The Union made no immediate response to the announcement, requested time to consider it, and a further meeting regarding the entire subject was tentatively set for February 8. Due to the nonavailability of various participants the February 8 meeting was not held and the meeting finally occurred on March 1. On February 27 Chief Plant Committeeman Dennis Szulinski was notified that four employees were to be laid off the following day and in fact on February 28 the first four layoffs occurred, which was the major topic of discussion at the March 1 meeting, the Union claiming that the layoffs were premature and that there should have been prior negotiation or bargaining, and the Company claiming that the entire matter had long since been settled during and in the 1976–77 contract negotiations. The charge in this case was soon thereafter filed (March 21).

C. *Evaluating Law and Evidence*

1. The work transfer

The language of the severance pay clause,[9] the bargaining history, and the evidence as a whole dictate my conclusion in this case that the Union waived its right to participate in or bargain about any decision to transfer work to Boaz and any resulting terminations or layoffs, except as may be otherwise provided in the contract.[10] I simply feel that that matter is so clear cut in this case that it deserves no further discussion or attention in this Decision.

2. Subcontracting

Although the contracting out of work done, or which may be done, by employees in a bargaining unit is generally considered to be a mandatory subject of bargaining,[11] I find that such is not the case here. The evidence reflects that for many years approximately 10 percent of Tocco's work was contracted out. This involved a small portion of almost every contract from a major customer involving $50,000 or more. The Company's motivation was always and solely economic, that is, it either lacked the ability to produce the item or product, or it was necessary to meet a delivery schedule. The record lacks any demonstrable evidence of an adverse impact on unit employees, and the Union had in the past the opportunity to bargain about changes in existing subcontracting practices at general negotiating sessions.[12] I find that the Company did not violate its statutory bargaining obligation by failing to invite union participation in its subcontracting decisions.[13]

3. The information request

In early January the Union requested information regarding contracting. The Company's January 19 reply was, I find, complete and informative, but did exclude the specific subcontract dates and the names of the subcontractor firms. Relative to the dates, the number of hours during the previous 1-year period was listed (8,200), the Company adding that "[e]very major order has at least several sub-contracts over a period of time with delivery scheduled for different appropriate times . . . [s]pecific information on each and every order is not immediately available." Regarding the firm or company names, refusal was based on "good business practice, including competitive considerations," although the Company explained that it had used three firms that it had been doing business with "anywhere from three to over twenty years." Other than the Union's initial request and the Company's reply, there is no evidence that the matter was further discussed or pursued at the March 1 meeting or otherwise until the issuance of the complaint. I thus find and conclude that there was substantial and adequate compliance with the information request.

Upon the foregoing findings of fact and initial conclusions, and upon the entire record, I hereby make the following:

Conclusions of Law

1. Respondent Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent Company constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production, maintenance and service employees and timekeepers of the Ohio crankshaft and Camshaft Division and the Tocco Division of Park-Ohio Industries, Inc., excluding office employees, plant protection employees, salaried employees, all group

[8] The announcement was read from a prepared statement which was admitted into evidence. The statement makes reference to the Company's warning of August 25, 1977, concerning the uncertainty of the Tocco plant and work transfers to Boaz and gives other reasons for the transfer.

[9] The clause provides that, in the event "the Company determines" to close the Tocco plant or transfer a Tocco operation, severance pay will be provided.

[10] See *International Shoe Company*, 151 NLRB 693 (1965); *Consolidated Foods Corporation*, 183 NLRB 832 (1970); *Radioear Corporation*, 214 NLRB 362 (1974); and *McDonnell Douglas Corporation*, 224 NLRB 881 (1976). Such things as recall rights and seniority are of course not encompassed in this conclusion.

[11] *Fibreboard Paper Products Corporation*, 138 NLRB 550 (1962), enfd. 322 F.2d 411 (D.C. Cir. 1963), affg. 379 U.S. 203 (1964).

[12] The subject was specifically addressed during the 1974 negotiations. Over the years, the Union had filed numerous grievances regarding the subject apparently none of which had gone to arbitration. Further, reduced emphasis was placed on the matter of subcontracting in this case by the General Counsel, whose major thrust was aimed at the work transfers to Boaz.

[13] *Westinghouse Electric Corporation (Mansfield Plant)*, 150 NLRB 1574 (1965).

leaders, foremen, foreladies, and all other supervisory employees, guards and professional employees as defined in the Act.

4. The Company's unilateral work transfers, subcontracting, and layoff of employees in this case were not in violation of Section 8(a)(5) and (1) of the Act, and thus the Company were not guilty of unlawfully refusing to bargain with the Union regarding said actions.

5. The Company in this case has not refused to tender relevant information to the Union in violation of Section 8(a)(5) and (1) of the Act.

6. The Company in this case has not otherwise violated the Act.

[Recommended Order for dismissal omitted from publication.]